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Attorney Docket: 1445-20

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BREAKUPS TO MAKEUP LLC, Plaintiff, -against- **SIMAN TRIO TRADING LLC.,** Defendant.	**16-CV-6358** **COMPLAINT** (Jury Trial Demanded)

Plaintiff, BREAKUPS TO MAKEUP LLC ("Breakups" or "Plaintiff"), by and through its attorneys, The Martinez Group PLLC, for its Complaint against Defendant, and SIMAN TRIO TRADING LLC ("SIMAN" or Defendant"), hereby alleges as follows:

NATURE AND SUBSTANCE OF THE ACTION

1. Plaintiff files this action against Defendant for Copyright Infringement under 17 U.S.C. §101, et seq. and for Unfair Competition under 15 U.S.C. § 1125, et seq.

2. This action is brought in response to a classic case of Copyright Infringement and Unfair Competition, specifically the unauthorized commercial, for-profit use and the unauthorized distribution of Plaintiff's copyrighted works; namely, the use and distribution of unauthorized and infringing copies of Plaintiff's Copyrighted works in

WALGREEN CO.'s pharmacy and department stores. Titles 15 and 17 of the United States Code (Lanham Act, Copyright Act) were enacted to provide remedies to copyright and trademark owners who suffer damages by reason of such actions.

JURISDICTION AND VENUE

3. This is an action for Copyright Infringement arising under the 17 U.S.C. § 501 et seq. and 15 U.S.C. § 1125 et seq. which seeks damages by reason of Defendants' prior and ongoing infringement of Breakups' valid and subsisting copyrights and trademarks.

4. This Court has jurisdiction of this action under 28 U.S.C. §§1331, 1332, 1338(a), and its supplemental jurisdiction.

5. Venue is proper in this district under 28 U.S.C. §1391 and §1400 in that Defendants or Defendants' agents may be found in this District and, upon information and belief, Defendants transact business in this District.

THE PARTIES

6. Plaintiff BREAKUPS TO MAKEUP LLC ("Breakups" or "Plaintiff") is a New York Limited Liability Company with its principal place of business located at 21 Red Pine Drive, Medford, New York 11763.

7. Defendant SIMAN TRIO TRADING LLC ("SIMAN") is a corporation organized under the laws of the State of Florida with its principal place of business located at 2100 Ponce de Leon Blvd, Coral Gables, Florida 33134.

8. Defendant SIMAN conducts business via its physical location in Florida and on the Internet via its website http://www.simantrio.com.

9. Upon information and belief Defendant SIMAN further distributes and sells its products by way of Walgreen CO.'s chain of Walgreen's pharmacy and department stores.

10. Walgreen Co. is not a party to this action.

11. By reason thereof and upon information and belief, SIMAN conducts business in the United States, The State of New York, in the County of Kings, within the Eastern District.

FACTS COMMON TO ALL CLAIMS

12. Plaintiff Breakups is the creator and exclusive owner of U.S. Copyright Registration VA 1-916-309 (COLLECTION OF BREAKUPS TO MAKEUP TAG LINES AND ART) ("Tag Lines and Art Work" or "Collection"), a copy of which is annexed hereto as Exhibit A.

13. Plaintiff Breakups is the author and exclusive owner of U.S. Copyright Registration VA 1-927-882 (COLLECTION OF BREAKUPS TO MAKEUP 9-14 DESIGNS) ("Tag Lines and Art Work" or "Collection"), a copy of which is annexed hereto as a part of Exhibit A.

14. Breakups' Copyright Registrations are valid and subsisting.

15. Plaintiff Breakups is the author and exclusive owner of U.S. Trademark Registration Serial Nos.: 4,563,746 (LOVE RAISED ME LIPSTICK SAVED ME); 4,564,229 (LOVE RAISED ME LIPSTICK SAVED ME); 4,729,473 (LOSING YOU HURT BUT LOSING MY MAKEUP BAG WOULD BE A TRAGEDY); 4,729,469 (I WOULD CRY BUT MY MASCARA IS DESIGNER), copies of which are annexed hereto as Exhibit B.

16. Breakups' Trademark Registrations are valid and subsisting.

17. Breakups is engaged in the business of creating goods that feature original artworks, phrases and taglines that resonate with consumers who respond to and purchase products that display or otherwise embody "cosmetic culture" and/or "girl culture."

18. Plaintiff's products are featured on, *inter alia*, various types of apparel and products including, but not limited to, shirts, makeup bags, knitted hats, tote bags, makeup cases, and phone cases, among others showings of which are annexed hereto as Exhibit C.

19. Plaintiff's goods and copyrighted works are offered via Plaintiff's own internet e-commerce website and by third party manufacturers and companies, including Urban Outfitters and Sephora, among, others (See, Exhibit C).

20. Products featuring the Plaintiff's copyrighted designs, taglines, trademarks and non-exclusive licenses to sell such products may be purchased directly from Plaintiff.

21. Breakups has sold and continues to sell and derive significant revenue from the sale of products featuring its copyrighted designs and trademarks together with the sale of non-exclusive licenses to third-party retailers and distributors to sell such products.

DEFENDANT'S ACTIONS

22. Upon information and belief, Defendant SIMAN has manufactured or instructed others to make nearly identical copies of goods bearing the THESE ARE A SLEW OF MY FAVORITE THINGS and LIFE IS SHORT WEAR MORE MAKEUP Tag Lines and Art Work bags for cosmetic goods offered via the retail stores Walgreen Co. retail stores, showings of which are annexed hereto as Exhibit D.

23. Upon information and belief, Defendant's infringing copies are cosmetic bags of the same shape, design and color as those created by Plaintiff (See, Exhibit C).

24. Defendant's infringing copies feature the tag lines THESE ARE A FEW OF MY FAVORITE THINGS and LIFE IS SHORT WEAR LIPSTICK, Tag Lines and Art Work of black and white cosmetic brushes and pencils, and lipstick containing a brightly colored tip (collectively, the "Infringing Works"), organized and appearing in the same manner as the authorized products featuring the protected THESE ARE A SLEW OF MY FAVORITE THINGS and LIFE IS SHORT WEAR MORE MAKEUP Tag Lines and Art Work (See, Exhibit C).

25. Upon information and belief, Defendant SIMAN have not secured permission or otherwise purchased any license from Breakups to use, copy, or distribute the THESE ARE A SLEW OF MY FAVORITE THINGS and LIFE IS SHORT WEAR MORE MAKEUP Tag Lines and Art Work.

26. Upon information and belief, the natural, probable, and foreseeable result of Defendant's wrongful conduct has deprived, and continues to deprive, Breakups of the benefits and revenue from the sale of licenses to use Plaintiffs copyrighted Works.

27. Upon information and belief, Breakups has lost, and will continue to lose, substantial revenue from Defendants' wrongful use, copying, distribution, and creation of unauthorized infringing works.

28. Defendant has refused to comply with Plaintiff's reasonable request for resolution of this matter despite several demands for such action.

FIRST CAUSE OF ACTION
COPYRIGHT INFRINGEMENT
17 U.S.C. §501, et seq.

29. Plaintiff repeats and realleges each and every allegation of the Complaint as set forth in Paragraphs 1 through 28, inclusive, and incorporates them herein by this reference.

30. Upon information and belief, Defendant has created or caused to created works bearing taglines and artworks substantially similar to those which are subject to U.S. Copyright Registration VA 1-916-309 (COLLECTION OF BREAKUPS TO MAKEUP TAG LINES AND ART).

31. Upon information and belief, Defendant has created or caused to created works bearing taglines and artworks substantially similar to those which are subject to U.S. Copyright Registration VA 1-927-882 (COLLECTION OF BREAKUPS TO 9-14 DESIGNS).

32. Upon information and belief, the works at issue are nearly identical having substantially similarity to Plaintiff' Copyrighted works, thereby leading ordinary observers of to overlook any disparities between Defendants' and Plaintiff's goods, causing deception thereby causing consumers to recognize and perceive Defendants' infringing copies as Plaintiff's copyrighted works.

33. By reason thereof, upon information and belief, Defendant has infringed upon Plaintiff's valuable Copyright in and to the LIFE IS SHORT WEAR MORE MAKEUP Tag Lines and Artwork as well as the unregistered THESE ARE A SLEW OF MY FAVORITE THINGS.

34. Breakups is entitled to recover damages it has sustained and will continue to sustain, together with any gains, profits, and advantages obtained by Defendants by reason of the acts of infringement alleged herein, as well as costs and attorneys' fees.

35. At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained by Breakups, but is believed to be not less than $150,000.

36. Breakups has no adequate remedy at law.

SECOND CAUSE OF ACTION
UNFAIR COMPETITION
15 U.S.C. § 1125, et seq.

37. Plaintiff repeats and realleges each and every allegation of the Complaint as set forth in Paragraphs 1 through 36, inclusive, and incorporates them herein by this reference.

38. Upon information and belief Defendant's use of images and tag lines that are confusingly similar to those of Plaintiff on goods that are in direct competition of those of Plaintiff constitutes Unfair Competition under 15 U.S.C. § 1125 et seq. and is likely to cause, confusion, mistake, deception among consumers of such goods.

39. Breakups is entitled to recover damages it has sustained and will continue to sustain, together with any gains, profits, and advantages obtained by Defendants by reason of the acts of infringement alleged herein, as well as costs and attorneys' fees.

40. At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained by Breakups, but is believed to be not less than $150,000.

41. Breakups has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests and prays that this Court will:

1. Preliminarily and permanently enjoin and restrain Defendants, their officers, directors, principals, agents, servants, employees, successors, assigns, and all those in active concert or participation with it from:

(a) Imitating, copying, posting, distributing, or making unauthorized use of Breakups' Registered Copyrights, including the infringing use of the THESE ARE A SLEW OF MY FAVORITE THINGS and LIFE IS SHORT WEAR MORE MAKEUP Tag Lines and Artwork;

(b) Manufacturing, creating, producing, advertising, promoting, or displaying any product or service bearing any simulation, reproduction, counterfeit, copy, derivative version, or colorable imitation of Breakups' Copyrighted Works;

2. Direct that Defendants deliver for destruction at Defendants' expense, *inter alia*, all goods bearing Plaintiff's registered Copyright; computer files, hard drives, solid state drives, flash drives, disks, CD-ROM's, DVD's, and all other recorded media together with all other items, including but not limited to bags and other goods showing the use of Plaintiff's Copyrighted Work, in its possession or under their control that were created through the unlawful use of Breakups' Copyrighted Works;

3. Direct the imposition of a constructive trust for all monies or benefits received by Defendants from the sale of services and goods that use or were created using an infringing copy and/or unauthorized derivative works based upon Plaintiff's Copyrighted Works;

4. Direct that Defendants be required to pay Breakups actual damages in the amount of $150,000 Dollars per infringement or Statutory Damages under Copyright Law, whichever is greater, for all gains, profits, and advantages derived by Defendants though their infringement of Breakups' Copyright;

5. Direct that Defendant be required to pay to Breakups such other damages that it has sustained as a consequence of Defendants' unauthorized use of Breakups' Copyrighted Works;

6. Direct that Defendant be required to pay to Plaintiff such other damages that it has sustained as a consequence of Defendants' unauthorized uses of Plaintiff's copyrighted Works;

7. Direct that Defendants be ordered to make a written report within a reasonable period of time to be filed with the Court detailing the manner of compliance with the requested injunctive and mandatory relief above;

8. Award Breakups the costs of this action together with reasonable attorneys' fees; and

9. Award Plaintiff such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff, Breakups to Makeup LLC, hereby demands a trial by jury.

Dated: November 16, 2016

Respectfully submitted,
THE MARTINEZ GROUP PLLC

By: /Frank J. Martinez/

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Breakups to Makeup LLC

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